



TRANSPARENCY OF THE SECURITY SECTOR IN **MACEDONIA**

Andreja Bogdanovski
Cvete Koneska

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Publisher

Analytica Think Tank

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Design and Layout

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This publication was originally developed as part of the research project “Civil Society Capacity Building on Mapping and Monitoring the Security Sector Reform in the Western Balkans, 2009- 2011”. This regional project involved 7 regional think-tank organizations from Albania, Bosnia and Herzegovina, Croatia, Kosovo, Macedonia, Montenegro and Serbia and was financially supported by the Ministry of Foreign Affairs of the Kingdom of Norway. It was developed in cooperation with the Geneva Centre for the Democratic Control of Armed Forces (DCAF) (www.dcaf.ch). The methodology for the mapping and monitoring of security sector reform was developed by Belgrade Centre for Security Policy (www.bezbednost.org). This publication was financially supported by DCAF.



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↳ List of Abbreviations

ARM – Army of Republic of Macedonia

ESPP – Electronic System for Public Procurement

EU – European Union

IA – Intelligence Agency

MoD – Ministry of Defense

MoF - Ministry of Finance

Mol – Ministry of Internal Affairs

PPB – Public Procurement Bureau

SAO – State Audit Office

UBK – Directorate for Security and Counter-Intelligence

↳ Preface

Even twenty one years after its independence and qualification for NATO membership, Macedonia's security sector still showcases doubts about its need for transparency, accountability and engagement with the public in implementing and creating security policies. One can argue that this is rather "normal" behaviour considering that even two decades after the breakup of Yugoslavia the country inherited a culture of secrecy from the previous regime. There are proponents who advocate that well-kept security sector provides far better security and as such make it, less vulnerable to possible intrusions. It goes without saying that one of the bases of its proper functioning is safe-guarding sensitive information. As argued in this policy paper this area in Macedonia, with certain exceptions, proves to perform well especially when speaking of classified information. Financial transparency can also serve as another good example where basic level of transparency is provided, when procuring security related items.

The aim of this paper is therefore to illuminate the main avenues where transparency and accountability meet secrecy in the Macedonian security sector and provide a critical review in five domains: access to information of public importance, protection of private data, protection of classified information, financial transparency of budgeting process and financial transparency of public procurement.

The findings in this publication are a result of a three year long project "Civil Society Capacity Building to Map and Monitor Security Sector Reform in the Western Balkans" carried out by a regional consortium of seven think tanks in the Western Balkans. The project resulted in publishing several policy papers: 1) Almanac on Security Sector Reforms in the Western Balkans, 2) Context Analysis of the Security Sector Reforms in the Western Balkans, 3) Security Policies in the Western Balkans, and in the case of Macedonia 4) Towards 2nd Generation of Security Sector Reforms in Macedonia.

The research to a large extent is based on a methodology¹ which has been developed by the Belgrade Center for Security Policy and further enhanced by the six other think tank organizations working on the project (including Analytica). Most of the data collected for the purpose for this publication reflects the period 2009 and 2012² and is built on qualitative interviews with experts, policy makers and academics, as well as members of Parliament and Government officials. The findings of this publication also result from data obtained using the Law on Free Access to Information of Public Character.

We would like to acknowledge the support of the Geneva Center for the Democratic Control of the Armed Forces (DCAF) and the Belgrade Center for Security Policy for managing the project and providing us with valuable feedback. Additionally, we would like to express our gratitude to Dr. Snezana Mojsoska who provided her valuable insights and external expertise on the early versions of the publication. Lastly we like to express our appreciation to Milka Ivanovska, a former intern of Analytica who performed exceptionally in the data collection process.

The recommendations provided at the end of the publication make additional applicability of this policy study by targeting policy makers as well as the public in an effort to raise awareness about the principles of transparency and accountability in Macedonian security sector.

1* More detailed information about the methodology can be found in the "Almanac on security Sector Reforms in the Western Balkans" pp. 241, available at: http://www.analyticamk.org/images/stories/files/ALMANAC_FINAL_WEB2.pdf

2* The findings for the Chapter on Financial Transparency reflect the period 2009-2010.

GENERAL TRANSPARENCY

↳ Executive Summary

Perceived as a byproduct of democracy, the increasing openness of state institutions towards citizens in Macedonia has been strengthened and normatively organized with the adoption of the Law on Free Access to Information of Public Character in 2006. The country needed 16 years to adopt a comprehensive legal solution enabling citizens to freely access information, even though the constitution has recognized it as a right since 1991. Management of personal data and classified information has also been put on the agenda in recent years with the adoption of relevant normative acts.

The main finding of the research suggests that, normatively speaking, all three areas (access to information, protection of classified data and protection of personal data) have appropriate laws which are further operationalised into secondary legislation and that there is no major disharmony between them. A feature of all three is the establishment of commissions/directorates tasked with following the implementation of the laws. As such they report irregularities and act upon them while affirming the benefits of these laws and the obligations of security institutions among the wider public. All have adequate competences which give them solid ground to monitor and act upon irregularities. In practice, sanctioning remains sporadic as a result of the novelty these legal solutions bring. In the case of free access to information, the time required for full adoption and recognition of this public right by state institutions has been considerable. A possible role model is the Directorate for Security of Classified Information, where regular inspections are taking place.

All three commissions/directorates lack appropriate funding and, to a certain degree, administrative capacity. This makes implementation of the legal provisions a difficult endeavor. These shortcomings are especially highlighted in areas such as trainings and sanctions. In such circumstances, where training remains limited, politicization of the public administration hampers the quality of implementation, since frequent rotations of employees occur.

In addition to this, the public shows a lack of awareness, especially concerning free access to information, thus leaving the state institutions without any pressure for better performance. A major issue that has been identified in promoting freedom of access to information is the possibility for state institutions to categorize certain documents under “restricted use,” which does not represent a level of classification but still prevents information from being released to the public.

In order to prevent officials from withholding information, amendments to the Law on free access to information introduced a “damage test” which made mandatory an assessment of whether releasing certain classified information would benefit the public more than keeping it confidential. In the case of the former, such information is then open to the public. Unfortunately the test is not used frequently and rulebooks and procedures need to be adopted to guide its implementation.

1] Access to information of public importance

A] Legislation

The overall “free access to information” architecture has been built on the foundations of the Law on Free Access to Information of Public Character (2006), the Law on the Protection of Personal Data (2005) and the Law on Classified Data (2004). All secondary legislation (sublegal acts) regarding the freedom of access to information is in place.³ The dates of adoption of these laws suggest the novelty of the free access to information concept in Macedonia.

Prior to the adoption of the Law on free access to information, the process for obtaining public information was complicated and sporadic due to the many different procedures adopted by different state institutions. Additional-

³* Commission for the Protection of the Right to Free Access to Public Information- Annual report 2010- March 2011, Page 2 Available at: http://www.komspi.mk/Content_Data/Baneri/godishen_izveshtaj_na_komisijata_za_zashtita_na_pravoto_za_sloboden_pristap_do_informaciite_od_javen_karakter_za_2010.pdf

ly, there were no functional complaint mechanisms in place thus in practice it was not easy to obtain public information. "Before the adoption of the law on free access to information the slogan which was widespread was "I have the need to know" while after the adoption of the law that has been changed in "I have the right to know". In other words this means that you do not need to elaborate why you would need that particular information."⁴

Since its adoption in 2006, the Law on Free Access to Information of Public Character has been amended twice. In its essence the law should make the public institutions more transparent and responsive to the general public. Yet there are certain safeguard mechanisms that make the text ambiguous and as such provides opportunities to circumvent the obligations set down in the law.

According to the current law "information of public character" represents any information which is already created by the information holder or any institution (Art.3, subsect. 2). In practice this shows that if there is no such information already created, then the request can be rejected. This would mean that institutions are not obliged to engage additional staff in order to create the information required (analyze or process data). That being said, investigating whether the information holder really does not possess the particular information can be a lengthy process involving many different actors such as the Commission for the Protection of the Right to Free Access to Public Information, the institution where the request has been sent and the relevant courts.

The Law on classified data recognizes one more category of documents "for restricted use" which does not fall per se under the five different categories of classified information (see the part discussing classified information) but which are not public (Law on Classified Information Art.10). There is obvious disharmony with the Law on free access to information in this case, which only mentions classified documents when speaking about the possibility of restriction for obtaining public information.

Legally speaking, by utilizing the so called "damage test" even classified information can be open to the public if the information holder assesses that in doing so, the public interest would benefit more than if this information were to

⁴* Interview with Cveta Trajkovska, Commission for the protection of the right to free access to public information- Interview conducted on 07.11.2011.

be protected. In addition, the law provides the possibility for partial access to information when there are certain elements which are classified. Those parts can be blacked out or removed from the text.

A specialized commission tasked with following the implementation of the Law on free access to information was established in 2006. One particular concern is its lack of competences in sanctioning those breaching the law.⁵ According to the current set up, the commission can act upon complaints/ perform field visits and assess whether the information holder has come into conflict with the law. In case such a thing does occur, the commission has the right to submit a request for initiating a misdemeanor procedure before the Primary Court. So far it has never submitted such a request, due to the fact that the law started implementing immediately after it was adopted by the Parliament, so that the information holders did not have enough time to familiarize themselves with the law.⁶

B] Implementation

Information holders are supposed to publish relevant and open information like strategies, analysis, statistics etc. on their websites (but also through other means) in line with Article 10 of the Law on free access to information. Among the three security sector actors this paper refers to⁷, the least transparent in this regard is the Intelligence Agency followed by the Ministry of Defense, where only limited data can be found. For example, the 2005 white book of defense is not available for download. Neither website has published secondary legislation such as rules and procedures etc. The Ministry of Interior seems to be more active in this sense by publishing all the laws and the accompanying secondary legislation online. Nevertheless, the MoI also publishes the draft versions of the laws or their amendments, albeit not regularly. Statistics, reports, studies and daily bulletins are also available.

5* Interview with Cveta Trajkovska, Commission for the protection of the right to free access to public information Interview conducted on 07.11.2011.

6* Ibid.

7* Ministry of Interior, Ministry of Defense and the Intelligence Agency

In analyzing the annual requests for public information, there is an evident trend of increase when it comes to submission of public information requests.

Year	2006	2007	2008	2009	2010	2011
Total requests	513	1476	1876	2106	2379	3496

Overview of the total requests for public information since the adoption of the law in 2006

Source: Public speech by Dance Danilovska –Institute Open Society Macedonia.

This increase is also present in the case of the Ministry of Interior. Most of the requests for public information concern data on crime, traffic, narcotics, temporary jobs etc. According to the Mol, all of the requests that were rejected were related to classified information.⁸ The Ministry of Interior has formed a specialized department for information of public importance whose main portfolio is to work on the implementation of the Law on free access to information.⁹ The data shows that from 2006 to 2010 only 1 out of 214 requests deals with the Mol budget spending and 6 others refer to public procurement procedures.¹⁰ Bearing in mind that the Mol is one of the biggest budget recipients it is reasonable to expect that a greater portion of the requests would address issues of budget spending.

Year	2006	2007	2008	2009	2010
Requests	4	44	34	63	69
Rejected	2	14	2	7	5

Overview of the total requests for public information received in the Ministry of Interior as well as the number of rejected requests for the period 2006 – 2010. Source: Ministry of Interior, Information obtained using the free access to information.

8* Data received using Free Access to Information. Applicable for the period 2006 – 2010

9* Ibid.

10* Ibid.

The Ministry of Defense, for the period between 2006 and 2010, received 62 requests for public information. There is no specialized department as in the case of the Ministry of Interior thus several persons are tasked with performing this duty in addition to their regular job portfolio. Up until now there have been no penalty proceedings initiated against the MoD or the Armed Forces personnel for lack of compliance with the law.¹¹

Year	2006	2007	2008	2009	2010
Requests	1	9	11	23	18

Overview of the total requests for public information received in the Ministry of Defense or the period 2006 – 2010. Source: Information obtained using the free access to information.

When it comes to the work of the Intelligence Agency there is a person in charge of working on requests for information of public character but there is no separate department being established. Up until 2011 no request for public information has been submitted to the Intelligence Agency (anecdotal evidence).

According to the Commission for protection of the free access to information, one of the main challenges when it comes to the implementation of the law concerns the lack of know-how both among the information holders as well as among those requesting information.¹² There is no specific security sector information about the number of complaints upon which the commission reacted but judging from the overall performance since its establishment in 2006 up until 2010 it has received in total 1911 complaints from citizens/organizations etc. Out of these it has positively responded to vast majority - 1480 complaints.¹³ Overall, most of the complaints refer to the silence of the state institutions in responding to those requested the information or lack of re-

¹¹* Information obtained using the Free access to information. Applicable for the period 2006 – 2010

¹²* Commission for the Protection of the Right to Free Access to Public Information- Annual report 2010- March 2011, Page 4, Available at: http://www.komspi.mk/Content_Data/Baneri/godishen_izveshtaj_na_komisijata_za_zashtita_na_pravoto_za_sloboden_pristap_do_informaciite_od_javen_karakter_za_2010.pdf

¹³* Ibid. Page 2

spect of the time period given to the institutions (40 days).¹⁴

This finding to a large extent applies to the security sector actors as well. Analytica's experience with the freedom of access to information in the security sector highlights the fact that there are various challenges among the MoI, MoD and IA when responding to the requests. Sporadic delays are evident, which may be due to the lack of administrative capacities. For example, just recently Analytica received a response from the MoI to a request for public information sent 6 months ago. Most of the complaints that Analytica has initiated before the commission had to do with the unsatisfactory response to some of the requests or declaring some of the information requests as falsely classified.¹⁵ Unfortunately in some cases, such as one where the Ministry of Finance was instructed by the commission to provide Analytica with annual reports on performed internal audits in the MoD, the commission's opinion was ignored. The lack of direct sanctioning evidently weakens the position of the commission in its efforts to build an authority among state institutions.

The damage test does not function in practice. None of the security institutions use it when rejecting a request for information being classified information. This could be traced to the lack of existence of procedures as to how one assesses whether the eventual declassification of a certain document benefits the public versus the information holder. Additionally, the commission does not have its own representative present when the information holder conducts the damage test.¹⁶ This may additionally shed a light on the overall objectiveness when representatives from the institution assess the damage.

When it comes to rejecting a request on the basis of classified information and consequently if there is an appeal to that, members of the commission pay a field visit to assess whether the information that has been rejected is indeed classified or if it has been used by information holders as an excuse not to provide data (anecdotal evidence). This being said, the members of the commission have security clearances (highest level – state secret) thus access

14* Ibid. Page 7

15* Read more about this on the section for classified data.

16* Interview with Cveta Trajkovska, Commission for the protection of the right to free access to public information Interview conducted on 07.11.2011

to classified data is fully enabled.¹⁷ Both the Ministry of Interior and the Ministry of Defense have delivered annual reports about the implementation of the law on free access to information. This however is not the case with the Intelligence Agency.¹⁸

C] Administrative Capacity

The Mol is the only security sector institution (compared the IA and the MoD) that has established a department for free access to information. The other two have appointed personnel where access to information is one part of their job portfolio¹⁹. A challenge that has been pointed out several times both by the commission as well as through Analytica's experience is the frequent changes among persons tasked with dealing with free access to information. This was observed most notably at the Ministry of Defense, whilst the Ministry of Interior exhibits good track record in this regard. The high turnover consequently affects the level of education and training among the personnel. The lack of officials charged solely with free access to information issues affects the overall performance therefore creating delays when responding.

The Commission for free access to information faces lack of sufficient budget for its work. The small budget directly affected the overall performance and efficiency especially the activities having to do with promotion of the right to freely access information of public character.²⁰ It was drastically decreased in 2010 compared to 2009.

17* Ibid.

18* Ibid.

19* Information obtained using the Free Access to information. Applicable for the period 2006 – 2010

20* Commission for the protection of the right to free access to public information- Annual report 2010 March 2011, Pages 34 and 35 Available at: http://www.komspi.mk/Content_Data/Baneri/godishen_izveshtaj_na_komisijata_za_zashtita_na_pravoto_za_sloboden_pristap_do_informaciete_od_javen_karakter_za_2010.pdf

Year	2008	2009	2010
Budget (MKD)	15.500.000	16.373.000	12.245.000

Source: Ministry of Finance (Web page)²¹

The decrease of budget also affected the education component embedded in the commission's portfolio. More precisely, the commission was not in a position to fulfill the entire education plan for 2010.²² Of the 36 posts which the commission is supposed to have only 12 were filled in 2010 due to the lack of finances. According to the commission's annual report the number employed is far from sufficient, especially when it comes to employees with a background in legal studies.²³

DJ Values

It seems that Macedonian citizens are not yet entirely familiar with the right to freely access to information. This claim is supported by a survey done by Foundation Open Society in Macedonia which gives a not very favorable assessment. Namely 63% of the respondents have answered that they are not familiar with the law. As many as 85% of the respondents have never submitted a request for an information of public character to any of the information holders.²⁴ These results give the impression that even several years after the law has been adopted there is still lack of awareness among the citizens on the

21* Budget for 2008, available at: http://www.finance.gov.mk/files/budget_za_2008.pdf; Budget for 2009, available at: http://www.finance.gov.mk/files/budget_2009_final.pdf; Budget for 2010 available at: http://www.finance.gov.mk/files/Budzet%20na%20RM%20za%202010%20za%20objavuvawe%20%202024.12.2009_1.pdf

22* Ibid.

23* Ibid. page 6

24* FOSIM survey – Perception of the citizens for the right for free access to information 2010 Available at: <http://soros.org.mk/dokumenti/istrazuvanje-na-javnoto-mislenje-za-primenata-na-zakonot-za-sloboden-pristap-vo-RM.pdf>;

benefits it brings them. Among the information holders there is a reluctance to accept the novelties that this law brings to the overall concept of transparency and open data. When asked for sensitive information such as those related to budget/oversight/inspections etc. some of the security sector institutions tend to use “creative solutions” that would eventually make those that requested the information give up on their request. For example, when Analytica tried to obtain information from an independent state institution, it was simply told that the questions asked were senseless.

2] Protection of private data

A] Legislation

The Macedonian Constitution refers to the protection of private data through Articles 18 and 25 which guarantee the safety and the privacy of personal data as well as the protection of personal integrity which comes from the processing and registering such a data. The Law on Personal Data Protection was adopted in 2005 and has been amended three times since. The legislative framework in this regard has been completed - including the necessary secondary legislation.²⁵ Still, the Council of Europe convention for the protection of Individuals with regard to Automatic Processing of Data has not yet been signed.²⁶

A person whose data has been processed must be informed of that activity and must also be given the name of the person and institution that is processing and collecting that data. Moreover, the person whose information has been processed can ask for modification and even erase the processed information. In this regard Article 15 of the law prescribes that the rights of the person whose personal data are processed might be exempted if, among other things, the person or the data are of importance to the security and the defense of the country.

25* Directorate for Personal Data Protection, Annual report for 2010- March 2011 Page 4. Available at: http://dzlp.mk/sites/default/files/Dokumenti/Godisen_izvestaj_2010.pdf

26* European Commission, Progress Report 2011, Page 64. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf

The Directorate for Personal Data Protection is in charge of following the implementation of the law as well as preparing secondary legislation (rulebooks etc.), conducting inspections and assessing the legality of personal data processing, leading misdemeanor procedures, conducting trainings, providing opinions on draft laws etc. The directorate reports to the Parliament once a year through an annual report.

Through the 2010 amendments of the Law on personal data²⁷, the Directorate for Personal Data Protection has strengthened its competences when it comes to conducting inspections. One of the most visible changes has been the upgrading of those Director's officials who conduct inspections to the position of 'Inspectors'. The inspections can be regular, extraordinary or controlling. The latter being a control that is conducted after the expiry date given for removing identified flaws. Moreover, the directorate's Inspectors have been given the ability to enter different premises of personal data processing, question officials working with personal data, and examine the equipment with which the data is processed etc.

B] Implementation

The EU progress report for 2010 assesses the work of the Department for Protection of Personal Data as satisfactory.²⁸ In 2010 and 2011 the department issued several opinions of draft amendments to laws, rulebooks etc. In particular the Ministry of Interior asked the department to provide an opinion on 16 Acts (mainly protocols for cooperation with third countries).²⁹ Additionally, the department has, for the first time, developed a four year strategy and action

27* Закон за изменување и дополнување на законot za zaštita na lični podatoci [Law Amending the Law on protection of personal data]. Official Gazette of the Republic of Macedonia. No 124/2010, 20 October 2010.

28* European Commission, Progress Report 2011, Page 64. Available at: http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf

29* Directorate for Personal Data Protection. Annual report for 2010. March 2011. Page 18&19. Available at: http://dzlp.mk/sites/default/files/Dokumenti/Godisen_izvestaj_2010.pdf and Annual report for 2011. Page 17&18 available at: http://www.dzlp.mk/sites/default/files/Dokumenti/Godisen_izvestaj/Godisen_izvestaj_2011.pdf

plan on the protection of private data.³⁰ The report of the implementation of the strategy is to be delivered jointly with the department's annual report of activities.

The regular inspections that are conducted by the Department for Protection of Personal Data are implemented on the basis of yearly and monthly programs. At the end of 2011 and the beginning of 2012 the department conducted the first regular two – month long inspections in the Ministry of Interior.³¹ There is no publically available information about the findings of these inspections. One extraordinary inspection has been conducted in a Police Station in the city of Skopje in 2011³² and two in 2010 in another local police station in Skopje and in the Sector for Internal Affairs Strumica³³. So far there are no inspections conducted in the Ministry of Defense or the Intelligence Agency. It is however worth noting that dozens of inspections were conducted in private security companies.

In 2010 most of the remarks on the more effective implementation of the provisions from the Law on Personal Data protection have been forwarded to the Ministry of Interior.³⁴ During the same year 16 complaints were filed with the Ministry of Interior on the basis of possible personal data infringement.³⁵ Out of the 16, 10 have been rejected and 6 are in a procedure.³⁶ According to the directorate's employees in the period between 2008 and November 2011 the directorate did not initiate sanctions against the Ministry of Interior, Ministry

30* Strategy for protection of Private Data 2012 – 2016 available at: http://dzlp.mk/sites/default/files/Strategija_DZLP.pdf

31* Information obtained from Dobrinka Borisovska- Department for protection of Personal Data. Conversation conducted on 21.11. 2011

32* Directorate for Personal Data Protection. Annual report for 2011. March 2012. Page 55. Available at: http://www.dzlp.mk/sites/default/files/Dokumenti/Godisen_izvestaj/Godisen_izvestaj_2011.pdf

33* Directorate for Personal Data Protection. Annual report for 2010. March 2011. Page 60. Available at: http://dzlp.mk/sites/default/files/Dokumenti/Godisen_izvestaj_2010.pdf

34* Ibid. page 22

35* Ibid. page 23

36* From 2011 the Department has changed the methodology and content of the Annual Reports thus making it unavailable to see the outcome of the six cases.

of Defense and the Intelligence Agency.³⁷

Across the security sector only the Ministry of Defense has named an officer for personal data protection, meaning the Intelligence Agency, the Ministry of Internal Affairs as well as the General Staff lack such a position.³⁸ Moreover, the websites of the MoI, MoD and the IA lack information on how the information stored on their web pages is protected and thus guaranteeing the privacy of the visitors.

CJ Administrative Capacity

One of the main activities of the Directorate for Protection of personal data is conducting trainings for those processing and storing personal data. The trainings are organized based on a yearly program developed by the directorate. In the last two years the directorate conducted two trainings both on generic issues covering different provisions from the law as well as sector specific such as those aimed at law enforcement agencies (Police, Financial Police, Customs and the Public Revenue Office).³⁹

According to the organizational chart of the directorate there are a total of 64 job positions envisaged, however the total is expected to reach a mere 20 by the end of 2011⁴⁰. Compared to 2010 only one more person has been employed. Most of the employees (13) have background in legal studies. Additionally, the directorate in 2011 benefitted from the work of 4 interns. Nevertheless in 2011 the directorate organized 9 training sessions for its employees, ranging from the transfer of personal data to third countries to border man-

37* Information obtained from Dobrinka Borisovska- Department for protection of Personal Data. Conversation conducted on 21.11. 2011

38* Ibid.

39* Department for protection of Personal Data. Available at:<http://dzlp.mk/mk/mesecni%20planovi>

40* Directorate for Personal Data Protection. Annual report for 2011. March 2012. Page 48. Available at: http://www.dzlp.mk/sites/default/files/Dokumenti/Godisen_izvestaj/Godisen_izvestaj_2011.pdf

agement.⁴¹ It is also important to note that the finances for conducting the trainings sessions originate from an EU project on strengthening the capacities of the Directorate for Protection of Personal Data,⁴² which indicates that the directorate should work on financial self-sustainability. In this light, the Directorate for Personal Data protection has doubled the amount of finances received by the state's budget compared to the previous years. This also can be a result of the increased inflow of finances coming from the fees that different organizations pay for attending training on personal data protection. According to the directorate's representative the budget is still not sufficient.⁴³

Year:	2009	2010	2011
Budget (MKD):	15.547 000	14.523 000	36.464 000

Source: Ministry of Finance (Web page)⁴⁴

41* Ibid. Page 50

42* 600 000 Евра помош од ЕУ за дирекцијата за заштита на личните податоци ш 600 000 Euros aid for the Directorate for Personal Data Protection from the EU] Kapital. 14 juni 2011 http://kapital.com.mk/mk/dneven-vesnik.aspx/69581/600_000_evra_pomosh_od_eu_za_direkcijata_za_zashtita_na_lichnite_podatoci.aspx?ild=2222&utm_source=daily.mk

43* Information obtained from Dobrinka Borisovska- Department for protection of Personal Data. Conversation conducted on 21.11. 2011

44* Budget for 2009, available at: http://www.finance.gov.mk/files/budget_2009_final.pdf Budget for 2010 available at: http://www.finance.gov.mk/files/Budzet%20na%20RM%20za%202010%20za%20objavuvawe%20%20%2024.12.2009_1.pdf; Budget for 2011, available at: http://www.finance.gov.mk/files/Budzet_na_RM_za-2011_god_ZA%20OBJAVUVANJE_13.12.2010.pdf

DJ Values

The fact that the MoI, the General Staff and the Intelligence Agency have not yet appointed an Official for Personal Data protection sheds a light their perception and the acceptance of the law on personal data protection. The Directorate in charge of personal data protection through different channels aims to increase public perception of the protection of personal data. An example of this can be seen in the ongoing project of the directorate and the daily "Nova Makedonija" regarding the possibility for citizens to ask different questions about personal data protection. Increased public awareness about the issue of personal data protection has also been displayed in response to the recent introduction of CCTV equipment throughout Skopje by the Ministry of Interior. This has provoked many reactions about the possibility for misuse of the cameras and questions about the processing of such a data. The gap between the installation of the cameras (the project started in 2009) and the official use of the CCTV (2012) was criticized mainly due to the fact that the public was not convinced that the cameras do not only record traffic and that they did not record in the meanwhile.

Additional controversies regarding the protection of personal data were raised by the decision of the Commission for lustration to publically reveal the files of former informants that used to cooperate with the secret services (from 1944 to 2006) and as a result endanger the basic human rights of the persons that have been linked to the secret services. Some of the files that are publically available even include the personal identification number. According to the Law on lustration (official name - Law on Additional Requirement for Public Office) the data of the informants that are registered as unable to perform public posts are not considered as to be personal data, which is something that clearly conflicts with both the Constitution and the Law on Personal Data Protection. The directorate for protection of personal data has so far not commented on this practice. It is also worth mentioning that ever since Macedonia's independence in 1991 there have been several cases of illegal wiretapping and misuse of surveillance equipment by state security services as well as by political parties. In all the cases clear violations of personal data have occurred.⁴⁵

⁴⁵* More information on the work of the Macedonian Security Services can be found in: Bog-

3] Protection of Classified Information

A] Legislation

The Law on Classified Data, adopted in 2004 establishes a comprehensive structure for protection and management of confidential data. Three amendments were enacted in the meantime. Prior to the adoption of the Law this area was regulated partially and in different sublegal acts.⁴⁶ Different laws covering the work of security sector institutions make reference to the classification of information. For example, the Law on the Ministry of Interior clearly states that the Mol will not reveal classified information (Art.5, subsec.3). Special safeguarding provisions are also listed when it comes to the work of the Directorate for Security and Counterintelligence especially in its communication with the parliamentary committee tasked to perform oversight over its work (Art.42, subsec.3). The same clauses are present in the Law on Police (Art.10 subsec.3), the Law on Service in the Army (Art 19), and the Law on Defense (Art.139). In the case of the Intelligence Agency the law does not refer to classified information but rather uses the term secret information (Art. 8).

The Macedonian Criminal Code does not list offenses related to violation of classified information per se but then again ties various wrongdoings with the revelation of secret information. These include: espionage, revealing state secrets etc. It is evident that 8 years after the adoption of the Law on Classified Information there is a need to sync some of the provisions in this area. According to a former Director of the Directorate for Security of Classified Information "state institutions seem to be inactive in the overall process of harmonization of the legislation especially where there is a need to change the term secret as opposed to classified."⁴⁷

danovski.A. Intelligence Governance in the Western Balkans - Macedonia as a Case Study, DCAF 2012, available at: <http://www.dcaf.ch/Publications/Case-Studies-on-Intelligence-Governance-in-the-Western-Balkans>

46* Professor Dr. Stojan Slaveski Законско уредување на тајните информации [Legal regulation of secret information], Nova Makedonija, available at: <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=325122033117&id=13&prilog=0&setlzdanie=22540>

47* Interview with Professor Dr. Stojan Slaveski (Former Director of the Directorate for Security

Accordingly there are four types of classification: state secret (highest), strictly confidential, confidential and internal. When it comes to the process of classification the current law prescribes that the highest classified information – state secret can be classified by the highest state officials (President, Prime Minister, President of Assembly, Ministers etc.) This solution however might not be the best as it affords these persons the right to arbitrarily set a document as state secret.⁴⁸ Over classification of data exists especially when it comes to the lowest level of classification (internal) so that the public cannot have access. “This may be partly because of the lack of security culture or the lack of knowledge of the law. However, the person that classifies certain documents should explain the reason behind the classification and the interests that would be threatened if that information is open.”⁴⁹

Vetting is required for those that want to handle classified information. The procedures entitles that the Directorate for Security and Counterintelligence and the Sector for army intelligence and counterintelligence to perform a background check of the applicant for a security clearance on behalf of the Directorate for the Protection of Classified Data. This set up shows some downsides especially where the Counterintelligence department has the main say in whether the person is eligible for handling classified data or not, a process that could sometimes be misused. In theory however there is a safeguard mechanism. “The Director of the Directorate for Classified Information has authority over the Directorate for Security and Counterintelligence and the Army intelligence and counterintelligence unit when it comes to checking whether the rejection or approval of someone’s security clearance has been done thoroughly and highly professionally so that there is no ground for possible doubts.”⁵⁰

Not every level of classification requires a thorough check up. According to Art.44 security clearance is not required for information/documents which fall

of Classified Information). Interview conducted on August 16 2012.

48* Professor Dr. Stojan Slaveski Законско уредување на тајните информации [Legal regulation of secret information], Nova Makedonija, available at: <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=325122033117&id=13&prilog=0&setIzdanie=22540>

49* Ibid.

50* Interview with Professor Dr. Stojan Slaveski (Former Director of the Directorate for Security of Classified Information). Interview conducted on August 16 2012.

under the weakest classification degree – internal. This solution might not be the best bearing in mind that according to the law (Art.8) unauthorized disclosure of the documents classified as internal would cause damage to the “...public security, defense, security and the intelligence and counter intelligence activities of the country.”

Moreover, not everyone all requires security clearance to work with classified information. The high state officials such as the President, Prime Minister, Vice Prime Minister, President of the Assembly, President of the Constitutional Court and the president of the Supreme Court do not require prior vetting, something which, for example, some MPs raised in couple of occasions. All state institutions are required to deliver systematization of their workplaces in which they should clearly identify what kind of certificate is needed for what position.

The Directorate for Security of Classified Information established in 2004 is the central point when it comes to the implementation of the different policies for securing classified data. With the amendments of the Law on Classified Data in 2007 the Directorate has expanded its scope of activities by being able to conduct inspections when it comes to the implementation of the different provisions stemming from the Law on Classified Data as well as leading misdemeanor procedures.

B] Implementation

Directorate’s inspectors conduct inspections on their own initiative as well as when they receive a notification for a possible wrongdoing in terms of handling classified data. The special Commission for Misdemeanours (formed by the Directorate’s Director) has until now acted upon a big case (among the security sector institutions) as a result of disclosure of foreign classified information.⁵¹ Apart from this case, the directorate’s inspectors so far have acted on a small number of cases when it comes to the improper handling of confidential

51* Interview with a representative of the Directorate for Classified information, conducted on 14.11.2011 the interviewee did not reveal the name of the particular security sector institution.

data among the security sector institutions.⁵² Most of the identified irregularities in this sector mainly derive from the lack of knowledge about the Law on Classified Information as well as the relevant procedures the law implies.

In reference to the inspections that are one of the main features of the Directorate's activities, up until 2007 there were regular controls in the registry system for sending foreign classified information whose end recipient were Macedonian institutions. At least twice per year such controls were conducted in the Ministry of Defence and the Ministry of Internal Affairs. Since 2007 these controls have also been conducted for national classified information.⁵³ Apart from the inspections conducted by the Directorate, NATO also conducts inspections to the Directorate for Security of Classified Data as well as other state institutions that use NATO classified information. The findings from the NATO inspection in 2010 assessed the work of the Directorate with high marks.⁵⁴ In 2009, 2010 and 2011 the Directorate conducted regular inspection on the registries of classified information in the Directorate for security of classified information located in Macedonia's missions in NATO and the EU.⁵⁵ All of the security sector institutions have designated staff that secures classified information.

Many controversies rose about the vetting process, especially among the members of parliament who are members of the committee for supervision of the work of the directorate for security and counterintelligence and the Intelligence Agency, as well as the one following the telecommunication interception techniques. Knowing that the Directorate for Security and Counterintelligence conducts the necessary check-ups, the opposition party members expressed doubts whether the lack of timely delivery of the security clearances or lack thereof might be due to political rivalry.⁵⁶ The issue has been temporarily solved by providing the members of the committees with temporary clearances.

52* Ibid.

53* Ibid.

54* Directorate for Security of Classified Information - <http://www.dbki.gov.mk/?q=node/177>

55* Interview with a representative of the Directorate for Classified information, conducted on 14.11.2011

56* Тајните служби го владеат парламентот [Secret services rule Parliament]. Vest. 18.10. 2010
Available at <http://www.vest.com.mk/?ItemID=8C12D57DEDDEB54BA13FB80AFC225CEA>

C] Administrative and Management Capacity

Even though the Directorate for Security of Classified information was formed in 2004 with the adoption of the Law on Classified Information it did not start its work from scratch. Prior to the establishment of the directorate, different departments for protection of classified information were scattered around the key security sector actors stemming from the security agreement between Macedonia and NATO in 1996. This has led to the formation of the National Security Authority in 2002 which soon afterwards (in 2004) was replaced with the current set up. This illustrates that there is an existing pool of staff that has been trained to protect the security of the classified information in line with the international (NATO) standards. While the other two independent bodies (Directorate for Protection of Personal Data and the Commission for Protection of the Right to Freely Access Public Information) are established by the Parliament, the Directorate for Security of Classified Data is a government agency. When comparing the setup with institutions from other countries Macedonia's set up is much better bearing in mind that in other countries these institutions are part of other security institutions.⁵⁷

The budget of the directorate is small, but it has strong support from NATO.⁵⁸ It is evident that there has been a decline in the budget provided to the directorate by the government especially compared to 2009 in total as well as when it comes to professional development.

⁵⁷* Interview with a representative of the Directorate for Classified information, conducted on 14.11.2011

⁵⁸* Ibid.

Year:	2009	2010	2011
Yearly Budget:	39.445.000	26.500.000	24.410.00
Professional development	330 000	160 000	150 000

Source: Ministry of Finance – Webpage⁵⁹

In late 2011 (when the interview was conducted) there were 32 employees working for the Directorate. This number does not vastly differ from the previous last 3 years (ranging from 32 to 34). Two of the employees work in the NATO and EU missions. Nevertheless there is a need for additional staff in these two locations due to the increased volume of classified information from Brussels and Mons, to ensure that there are at least two persons that can act as deputies (which is also a NATO requirement).⁶⁰ Apart from the need for strengthening the capacities in Macedonia's missions abroad, the Directorate also deems necessary an increase of staff in the national register, the IT sector and the sector for international cooperation.⁶¹ Most of the current employees have been working in the directorate since 2006 and have expertise in the field.⁶²

⁵⁹* Budget for 2009, available at: http://www.finance.gov.mk/files/budget_2009_final.pdf Budget for 2010 available at: http://www.finance.gov.mk/files/Budzet%20na%20RM%20za%202010%20za%20objavuvawe%20%20%2024.12.2009_1.pdf; Budget for 2011, available at: http://www.finance.gov.mk/files/Budzet_na_RM_za-2011_god_ZA%20OBJAVUVANJE_13.12.2010.pdf

⁶⁰* Ibid.

⁶¹* Ibid.

⁶²* Ibid.

D] Values

Even though the Directorate for Security of Classified Information is a government agency, it profiles itself as fully independent by highlighting that the Director of the directorate cannot be member of any political party and that NATO insists on no-tolerance of politicization of the work of the directorate especially when it comes to issuing security clearances.⁶³ The possibility of losing security clearance represents a bigger threat compared to the fines listed in the law (author's note - ranging from 1000 to 5000 EUR).⁶⁴ If such a thing occurs, that person might lose their job in institutions that work with classified data.⁶⁵ There are cases where state institutions ask for additional information and controls from the directorate to make sure that they are handling the classified information in accordance with the law.

The experience of Analytica shows that there are still certain security institutions that sustain the culture of secrecy, which originated from the past system. For example, the Intelligence Agency in the first round of questionnaires sent using the freedom of access to information rejected most of the information on the basis of it being classified information. This has now been revealed to be false as a result of the intervention of the Commission for Protection of the Freedom of Access to Information and much of the information has subsequently been provided.

Concerns have risen amid the disclosure of a classified document by the former President Branko Crvenkovski on a TV debate revealing proposals by the UN special envoy regarding the name dispute between Macedonia and Greece⁶⁶. The public prosecutor's office revealed that it was considered to be a highly confidential document.⁶⁷ A national daily newspaper investigated

63* Ibid.

64* Ibid.

65* Ibid.

66* Црвенковски не издал државна тајна, вели Шврговски [Crvenkovski did not reveal state secret, Shvrgovski says], Utrinski Vesnik. 05.06.2012. Available at: <http://www.utrinski.com.mk/default.asp?ItemID=5E3F2EC03928A0499D70D61EBF97285E>

67* Ibid.

whether the document was in the archives of documents at the (current) President's Office, which turned out not to be the case.⁶⁸ This has raised questions as to whether some officials have "private" collections of classified information. The Directorate for Security of Classified Information has already sanctioned several employees.⁶⁹

68* Приватните архиви полни со државни тајни [Private archives full with state secrets] Dnevnik, 30.05.2012. Available at: <http://daily.mk/forward/1320778/privatnite-arhivi-pol-ni-so-drzhavni-tajni>

69* Паднаа првите казни за злоупотреба на државни тајни за името [First sanctions for violation of state secrets] Dnevnik, 05.06.2012. Available at: <http://dnevnik.com.mk/?ItemID=F-C75569EB6ED204E84BC755F2E645ED3>

↳ Recommendations:

- Amend the Law on Classified Information (Art.10) so that it no longer allows documents to be categorized under restricted and unavailable to the public, thus leaving state institutions no opportunity to refuse a request for free access to information on such grounds.
- Prepare and adopt a rulebook and procedures for implementing the damage test. The Commission for Free Access to Information of Public Character should organize a set of trainings sessions for state institutions, informing them of the procedures for applying this test.
- The Commission for Free Access to Information of Public Importance should create an accessible handbook on ways to utilize the freedom of access to information and promote it in partnership with civil society organizations.
- Greater financial resources should be devoted to the commissions/directorate, especially targeting units tasked with control and sanctioning.
- The Ministry of Interior, due to its complex structure and large number of units/departments, should allocate greater funds and appoint more officials to deal with access to information of a public character.
- The General Staff and the Intelligence Agency should appoint a personal data protection officer.
- At least two additional persons should be hired in the Macedonian Mission to the EU/NATO in Brussels and the headquarters of NATO in Mons (Supreme Headquarters Allied Powers Europe) for handling classified data.
- The Law on Free Access to Information of Public Character should be amended by incorporating a sanctions department that would enable them to directly impose sanctions.
- Data privacy policies across the websites of the Ministry of Interior, Defense and the Intelligence Agency should be published.

↳ Bibliography:

Устав на Република Македонија [Constitution of the Republic of Macedonia]. *Official Gazette of the Republic of Macedonia*. No.52. 22.11,1992.

The Constitution of the Republic of Macedonia has been amended with the following amendments: Amendments I and II (10 January 1992); Amendment III (02 July 1998); Amendment IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII and XVIII (20 November 2001); Amendment XIX (30 December 2003); Amendments XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX and XXX (09 December 2005); Amendment XXXI (9 January 2009); Amendment XXXII (12 April 2011).

Закон за слободен пристап до информации од јавен карактер [Law on free access to information of public character]. *Official Gazette of the Republic of Macedonia*. No. 13/2006, 01 February 2006.

- Закон за изменување на законот за слободен пристап до информации од јавен карактер [Law Amending the Law on free access to information of public character]. *Official Gazette of the Republic of Macedonia*. No. 86/2008, 14 July 2008.

- Закон за изменување на законот за слободен пристап до информации од јавен карактер [Law Amending the Law on free access to information of public character]. *Official Gazette of the Republic of Macedonia*. No. 6/2010, 15 January 2010.

Закон за заштита на лични податоци [Law on protection of personal data]. *Official Gazette of the Republic of Macedonia*. No. 7/2005.

- Закон за изменување и дополнување на законот за заштита на лични податоци [Law Amending the Law on protection of personal data]. *Official Gazette of the Republic of Macedonia*. No.103/2008. 19 August 2008.

- Закон за изменување и дополнување на законот за заштита на лични податоци [Law Amending the Law on protection of personal data]. *Official Gazette of the Republic of Macedonia*. No 124/2010, 20 October 2010.

- Закон за изменување и дополнување на законот за заштита на лични податоци [Law Amending the Law on protection of personal data]. *Official Gazette of the Republic of Macedonia*. No. 135/2011. 03 October 2011.

Закон за класифицирани информации [Law on Classified Data] *Official Gazette of the Republic of Macedonia*. No. 9/2005, 27.02. 2004

Закон за изменување и дополнување на Законот за класифицирани информации. [Law Amending the Law on Classified Data]. *Official Gazette of the Republic of Macedonia*. No. 113/2007, 20.09.2007

Закон за изменување и дополнување на Законот за класифицирани информации. [Law Amending the Law on Classified Data]. *Official Gazette of the Republic of Macedonia*. No. 145/2010, 05.11.2010

Закон за изменување и дополнување на Законот за класифицирани информации. [Law Amending the Law on Classified Data]. *Official Gazette of the Republic of Macedonia*. No. 113/2007, 20.09.2007

FOSIM survey – Perception of the citizens for the right for free access to information <http://soros.org.mk/dokumenti/lstrazuvanje-na-javnoto-mislenje-za-primenata-na-zakonot-za-sloboden-pristap-vo-RM.pdf>; 2010

Annual report 2010 - Commission for the protection of the right to free access to public information.. March 2011 http://www.komspi.mk/Content_Data/Baneri/godishen_izveshtaj_na_komisijata_za_zashtita_na_pravoto_za_sloboden_pristap_do_informaciite_od_javen_karakter_za_2010.pdf

Annual report 2011 - Commission for the protection of the right to free access to public information.. March 2011 http://www.komspi.mk/Content_Data/Baneri/godishen_izveshtaj_na_komisijata_za_zashtita_na_pravoto_za_sloboden_pristap_do_informaciite_od_javen_karakter_za_2010.pdf

Annual report for 2010. March 2011. Directorate for Personal Data Protection. http://dzlp.mk/sites/default/files/Dokumenti/Godisen_izvestaj_2010.pdf

Annual report for 2011. March 2012. Directorate for Personal Data Protection. http://www.dzlp.mk/sites/default/files/Dokumenti/Godisen_izvestaj/Godisen_izvestaj_2011.pdf

Progress Report 2011 European Commission, http://ec.europa.eu/enlargement/pdf/key_documents/2011/package/mk_rapport_2011_en.pdf

Strategy for protection of Private Data 2012 – 2016 available at: http://dzlp.mk/sites/default/files/Strategija_DZLP.pdf

Annual report for 2011 Directorate for Personal Data Protection. March 2012. http://www.dzlp.mk/sites/default/files/Dokumenti/Godisen_izvestaj/Godisen_izvestaj_2011.pdf

Annual report for 2010 Directorate for Personal Data Protection. March 2011. http://dzlp.mk/sites/default/files/Dokumenti/Godisen_izvestaj_2010.pdf

Media:

Тajните служби го владеат парламентот [Secret services rule Parliament].“ *Vest*. 18.10. 2010 Available at <http://www.vest.com.mk/?ItemID=8C12D-57DEDDEB54BA13FB80AFC225CEA>

Professor Dr. Stojan Slaveski Законско уредување на тајните информации [Legal regulation of secret information], Nova Makedonija, available at: <http://www.novamakedonija.com.mk/NewsDetal.asp?vest=325122033117&id=13&prilog=0&setlzdanie=22540>

600 000 Евра помош од ЕУ за дирекцијата за заштита на личните податоци ш 600 000 Euros aid for the Directorate for Personal Data Protection from the EU] *Kapital*. 14 juni 2011 http://kapital.com.mk/mk/dneven_vesnik.aspx/69581/600_000_evra_pomosh_od_eu_za_direkcijata_za_zashtita_na_lichnite_podatoci.aspx?ild=2222&utm_source=daily.mk

Црвенковски не издал државна тајна, вели Шврговски [Crvenkovski did not reveal state secret, Shvrgovski says], *Utrinski Vesnik*. 05.06.2012. Available at: <http://www.utrinski.com.mk/default.asp?ItemID=5E3F2EC03928A0499D-70D61EBF97285E>

Приватните архиви полни со државни тајни [Private archives full with state secrets] *Dnevnik*, 30.05.2012. Available at: <http://daily.mk/forward/1320778/privatnite-arhivi-polni-so-drzhavni-tajni>

Паднаа првите казни за злоупотреба на државни тајни за името [First sanctions for violation of state secrets] Dnevnik. 05.06.2012. Available at: <http://dnevnik.com.mk/?ItemID=FC75569EB6ED204E84BC755F2E645ED3>

Interviews conducted:

Interview with Cveta Trajkovska - Commission for the Protection of the Right to Free Access to Public Information. Interview conducted on 07.11.2011.

Interview with Professor Dr. Stojan Slaveski (Former Director of the Directorate for Security of Classified Information). Interview conducted on August 16 2012.

Interview with a representative of the Directorate for Classified information, conducted on 14.11.2011 The interviewee did not reveal the name of the particular security sector institution.

Other:

Information obtained from Dobrinka Borisovska- Department for protection of Personal Data. Conversation conducted on 21.11. 2011

FINANCIAL TRANSPARENCY

↳ Executive Summary

This paper examines the levels of financial transparency in the security sector in Macedonia. The analysis of financial transparency is divided into two fields of observation: financial transparency in the budgeting process and financial transparency in public procurement. For each of these two fields of observation we examine the state of legislation in the field, the levels of implementation of the legislation, the administrative and management capacity of the institutions and bodies responsible for implementing the legislative provision, and the extent to which democratic values of financial transparency have been adopted and domesticated among public sector actors.

Both in budgeting and public procurement, national legislation is solid and is, for the most part, in line with international and European standards in the field. In addition to primary laws, most secondary legislation has also been adopted, even though for some newly adopted or amended laws the adoption of secondary legislation is lagging. The implementation of the legislative provisions is patchy, with some aspects of financial transparency provisions being better and more consistently implemented than others, and with some innovative tools such as e-budget and e-procurement software making headway in achieving financial transparency. Breach of financial transparency provisions however is still frequent, but those responsible are increasingly prosecuted and taken to court, as indicated in this paper.

The administrative and management capacity of responsible bodies is variable. Some institutions, such as the Ministry of Finance, the Public Procurement Bureau and the State Audit Office can boast solid organizational, human and material capacity, while the financial transparency capacity in others, in the Ministries of Defence and of the Interior for example, especially at the local level, is still being built. The adoption of financial transparency values constitutes the weakest spot of the Macedonian public sector. Those democratic

values are missing due to a weak track record of consistent implementation of financial transparency provisions and media disclosure of financial and procurement scandals in security sector institutions.

↘ Table with Grades

Financial transparency in the security sector in Macedonia is given an overall grade of 3. Analysis of the available data on this topic in Macedonia suggests that both in relation to budgeting and public procurement, some basic standards of transparency have been introduced into finance legislation, and streamlined in the security sector legislation and practice. Most institutions adhere to the legal requirements, although the quality of implementation varies between institutions, and most still need to show a sustainable track record of implementation and adoption of financial transparency values in their work.

The grades for the two separate fields of analysis, budgeting and public procurement are elaborated in more detail in the sections below.

Fields of Observation	Financial Transparency in the Budgeting Process	Financial Transparency in Public Procurement	Overall Grade
Grades	3	3	3

Financial transparency, in addition to general transparency, is crucial to building a democratic security sector. Through parliamentary participation and oversight over the budgeting and public procurement processes, as well as through public access to relevant information and documents about the financial aspects of the work of the security sector, the public is informed and the shroud of secrecy removed from the work of security actors, while the misuse of funds and fraud are also prevented. The following sections offer an analysis of the state of financial transparency in the Macedonian security sec-

tor. Budgeting and public procurement practices are examined by mapping the progress achieved in aligning legislative, administrative, managerial and normative elements of financial work with democratic standards of financial transparency in the security sector.

1] Financial Transparency of Budgeting Process

A] Legislation

Macedonia has adopted all the basic legislative documents relating to the budgeting process. The budgeting process is regulated through the Law on Budgets (Official Gazette 64/2005), which provides the main principles of the budgeting process. Furthermore, an annual Law on the execution of the budget, which the Assembly adopts as the budget, is approved for the following year. Apart from listing transparency, efficiency, effectiveness and accountability as basic budgetary principles, the Law on Budgets contains a separate chapter on transparency, outlining the basic requirements that need to be respected. Those include:

publishing the budget,

publishing mid-year and end year report,

publishing the executive version of the budget, and

publishing the final account on the Ministry of Finance (MoF) web site and in the Official Gazette.

In addition to publishing the various versions of the central budget and budgetary reports, the Ministry of Finance (MoF) has made available the guidelines and forms that each budgetary user needs to use when preparing this institution's budget in the planning stage of the budgetary cycle, as well the sub-legal acts regulating the budgetary process. Following the provisions

from the Law on Budgets, MoF prepares the central budget based on several strategic documents including: the Government's strategic priorities, the mid-term fiscal strategy, and macroeconomic indicators, all of which are made available on the MoF website.

For the sake of transparency and oversight, the central budget, and subsequently the budgets of each budgetary beneficiary institution are divided into the categories of basic budget, donations budget, loans budget and self-financing activities budget, depending on the nature of sources and revenues. This way the tracking and reporting of the spending of funds from various sources – state budget, own sources, donations – is made easier and so are subsequent audits.

However, although the documents and guidelines for preparing the budget are available, the budget planning stage is not open to the public as there is no means for the population to see or comment on the budget proposal – that is to say, no citizens' budget. This is a quite common tool in more developed democracies, which allows citizens to judge how well their governments are planning expenditures and contributes to more accountable and participatory public finance. Moreover, in case of budget restructuring, such as during 2010, when allocated sums are changed in the course of a single budget year, the public is not consulted over the nature of the changes and their priorities among the budget items.

The Law on Budgets regulates parliament's role in the budgeting process. The parliament adopts the annual Budget Proposal, which the government submits by 15 November each year. The Budget and Finance Committee (BFC) examines the Budget Proposal, which is then debated in a plenary session, before being adopted or returned to the government for changes. Parliament also receives the Final Account from the government, along with the report from the State Audit Office, and examines the execution of the budget. Finally, parliament needs to adopt any change in the budget that exceeds 5% of the revenues and expenditures.⁷⁰

The implementation of the budget is controlled by the State Audit Office (SAO) which publishes the annual audit statements of the central budget and

70* Закон за буџетите [Law on Budgets] in Official Gazette of Republic of Macedonia. (No.64/05) 3 August 2005.

controls the financial work and performance of government and public bodies, including security sector actors such as the Ministry of Defense (MoD), the Ministry of Interior (Mol), the Intelligence Agency (IA), etc. The latest Law on State Audit (Official Gazette 66/2010) was enacted in 2010 and is up to the highest international standards in auditing and financial control, including the provisions for the transparency of the work of SAO. The SAO also has access to classified data, as some of the budgets of security actors would fall in this category, and the state auditors need to go through the security certification procedure as set in the Law on Classified Data (Official Gazette 09/04) in order to access this data. The auditors prepare a separate report on the classified data, that is handled through procedures applying to classified data and the public has limited access to it.

B] Implementation

Overall, the implementation of the financial transparency provision, as set by the Law on Budgets and related legislation, is solid. The MoF publishes the budget, audit reports and annual financial statements on its web-site (www.finance.gov.mk) and in the Official Gazette. In addition, the MoF also has a three year archive of all budget related documents, including the end year balance, the budget and budget proposal, the annual laws on implementation of the budget and eventual changes and amendments to the budget. In addition, the MoF web site also has a section on budget legislation and regulations, which contains the laws, and guidelines for preparing the budget (classification for revenues and expenses) for budget users.

Aiming to increase efficiency and transparency, in 2008 the MoF introduced an electronic application (software) called e-budget for several budget beneficiaries. This application should make the budgeting process easier for those budget beneficiaries who are provided with user details and guidelines on how to use the tool, and contains all the forms and documents that budget users (different public bodies and institutions) use during the budget cycle. All public bodies have access to the documents provided by other budget users, which makes the budget process more open and easier to oversee.

Similarly, the SAO performs audit and financial control on public institutions, including security sector actors, following the guidelines and provisions of the Law on State Audit. The web-site of the SAO (www.dzr.gov.mk) contains the annual audit reports of the central budget as well as periodical audit reports for the budget of public institutions, following the annual plan of the SAO. Security sector actors, such as the MoD, Mol, and IA, are regularly subject to SAO control, and the reports can be accessed in the archive of the SAO web-site, which dates back to 2001. The latest SAO report on the MoD stated that funds from rents were collected and reported with delays because of the lack of a consolidated data base of capital objects owned by the Ministry, and necessary measures to correct it were recommended.⁷¹ The SAO also publishes follow-up reports of recommendations from previous audited reports on its web site. Most recommendations, about 80%, are accepted and implemented according to the SAO, which constitutes a solid record of implementation.⁷²

Regarding the transparency of the budget and its items, Macedonian budgeting procedures could improve, especially in the security sector. The budgets for the MoD and Mol contain large sums for 'functioning of the Army of Republic of Macedonia' and 'functioning of the Intelligence Agency', which does not clearly explain what those sums are used for. This is especially important since the budget already contains separate items for equipment and supplies, and salaries, so such costs are not explained properly. This allows for discretionary changes to the budget for security institutions, as it happened in 2008 when the UBK budget was increased to 25 million euro, without additional explanation or justification. While institutions have the legal right to transfer limited funds from one to another budget line, the categories in the budget are not clear enough to understand for what purposes these funds will be used.

71* Годишен извештај 2009г. [Annual Report 2009], State Audit Office, 21 July 2010

72* Годишен извештај 2009г.

C] Administrative and management capacity

As some of the primary legislation regularly undergoes revision and amendments, related secondary acts need to be changed and adopted anew, which is often a lengthy process. When altogether new laws are adopted (such as the 2010 Law on State Audit) a whole new set of bylaws needs to be adopted. This process can take up to a year, and often longer, which implies that the work of the financial system and its transparency are not yet settled and are still undergoing frequent changes.

In terms of human and financial resources, the situation is similar. Some institutions can boast quite solid human and material capacity to implement their work, such as the MoF, which has a systematization act of 700 pages and more than 700 employees, or the SAO, which in 1999 started with only 9 employees, but now has 93 high-skilled employees, and a long list of strategic, development and training documents. These increases in the number of skilled employees, strategic documents and secondary legislation show how the capacity to perform their tasks has increased, as has the quality of the services they provide.

On the other hand, some other bodies are just being established following the adoption of a new law, such as the units for internal audit and financial control in each of the budget beneficiaries, including security sector actors. The number of internal control units has risen from 15 to 110 in the last five years, so most public institutions have established the legally required internal audit unit. Related to this, the number of recommendations they give, although regrettably the percentage of adopted recommendations by the institutions has remained at about 50% (54.5% in 2008, 56% in 2007).⁷³ In 2009 only, 144 new internal auditors and 130 financial control officers have been employed in central government institutions⁷⁴, and although the MoD and MoI were not among the under-staffed institution requiring additional employees, these numbers suggest that the capacity building process in terms of financial con-

73* Состојба на системот за внатрешна ревизија. [State of the Internal audit system]. Ministry of Finance. Available at: <http://finance.gov.mk/node/564>

74* Финансиска контрола: дописи и извештаи. [Financial control: communication and reports]. Ministry of Finance. Available at: <http://finance.gov.mk/node/679>

trol and audit is not fully complete.

Each public institution is also required to have a unit for internal audit and unit for financial affairs, following the adoption of the Law on Internal Audit in the Public Sector (Official Gazette 69/04) and Law on Public Internal Financial Control (90/09). These units are managed from the centre for internal audit in the MoF. The units for internal audit and financial affairs, in addition to the financial audit, perform audit over the harmonization of internal acts with national legislation and the effectiveness and value-for-money performance of the public institutions. Their reports are not public and are intended for the use of the MoF and the MoF Committees on Audit and Financial Control.

DJ Values

The legislative changes and capacity-building activities described in the above sections suggest that the awareness of financial transparency is increasing, at least among some members of the political and administrative elites who have initiated those reforms. However, as capacity is still weak and implementation of the ambitious legislative provisions is lagging behind, values are yet to be domesticated among those managing and those working for the security sector institutions. As indicated in the above sections, internal audit units are recently being established, and more time needs to pass before a strong track record of transparent budgeting emerges.

Not surprisingly the public trust and public perceptions about financial transparency are also lagging behind. Public trust in financial institutions is lower than the confidence in the Army, which suggests that the population is not confident or familiar with financial transparency overall.⁷⁵ However, public trust and perceptions are shaped more by several financial and corruption scandals in the police and the army that have become big media stories in the past few years, than by the contents of the auditors' reports and openness of the budgeting process.

⁷⁵* See data from Gallup Balkan Monitor 2009, 2010. Available at: <http://www.balkan-monitor.eu/index.php/dashboard>

Grade: 3. The necessary legislation is adopted including provisions in line with international financial transparency standards. Implementation and capacity have been strengthened recently but there is no sustained track record of good practice, and frequent changes and amendments prevent practices from settling and becoming widespread and accepted.

2] Financial Transparency of Public Procurement

A] Legislation

Public procurements are managed by the MoF. In particular, the Public Procurement Bureau (PPB) is responsible for regulating, overseeing and running the public procurement procedures in the public sector in Macedonia. The PPB is a central institution, but each of the public institutions, including security sector actors, has a person or unit responsible for public procurement. The work of the PPB and public procurement procedures in general are regulated through the Law on Public Procurement (Official Gazette 136/07), which specifies the different types and procedures for procurement and ensures that transparency principles, among others, need to be respected.

Security sector institutions are bound by the procedures set in the Law on Public Procurement and the list of secondary legislation available from the PPB when running their public procurements. Each public institution prepares an annual procurement plan, following guidelines by the MoF, specifying the nature, amount and value of goods or services it requires. Public procurement calls are published following the annual plan, and bids are collected and evaluated according to efficiency criteria set by the law. The only exception specified by the law concerns public procurement of goods or works which are important for the security and defence of the state, in which case the public procurement procedure does not follow the general provisions, but information is treated as classified information. In those instances, the institutions which require classified procedure need to inform the government at the start

of each year about the type and amount of such procurements, so that the government can run the procedure.

In terms of transparency, the basic law as well as secondary legislation are in line with international and European standards of public procurement. The PPB has made available through its website the law, additional bylaws and regulations, including EU directives that are being adopted in national legislation, as well as detailed rulebooks and guidelines about the public procurement process. The PPB is also responsible for running the Electronic Public Procurement System (EPPS), which allows for greater transparency of the public procurement process through making all tender documents available, announcing changes of calls and requirements, and running e-auctions. The E-procurement tool allows the public to access the details of procurement calls, the list of calls each institution has published and the winning bidder on each call.

B] Implementation

The EPPS is the only tool which allows open access to information concerning public procurement in security sector institutions. The EPPS web-site (e-nabavki.gov.mk) contains a 2-year archive of the procurement calls and contracts concluded by each institution. Anyone can see what type and how many types of calls and contracts have been concluded, which are categorized according to the amount of the contract: below EUR 5,000, below EUR 20,000, and above EUR 20,000.

There is no available statistic on the types of procurement calls, their amount, their duration or the number of bidders taking part. The MoD, MoI and IA do not provide such information so it is difficult for the public to articulate a clear idea about the state of public procurement in the security sector. A quick look at the EPPS archives suggests that the most frequent type of procurement is small procurement up to EUR 5,000, for all MoI, MoD and IA, although MoD has most up to EUR 20,000 procurements. No information is available about the classified procurements, which are treated as confidential data and not

available for public scrutiny.

In case of breach of the legal procedure for public procurement the law prescribes fines. The SAO reports that about a quarter of irregularities concerning public procurements concern procurements without public call, and a significant number of irregularities during the evaluation stage. There have been numerous cases of foul public procurement procedures, some of which ended in court. Twice the Minister of Defence has been taken to court for breach of the public procurement procedures, implying that not even the highest political figures are immune to prosecution for illegal acts.

C] Administrative and Management Capacity

Most of the efforts aimed at combating corruption concern the process of public procurements. Hence, improving the transparency of public procurement has been high on the political agenda for the last several years. A new Law on Public Procurement was adopted in 2007 and the pertaining secondary legislation revised in order to fulfil international and European standards in this area. Related to this is the establishment of the e-procurement system as a more transparent and easily accessible tool, allowing greater overview and easier participation in the public procurement process.

The PPB in its latest strategy has recognized the need for additional capacity building in the public sector for improving the work of the public procurement process. The PPB has planned trainings and evaluation of the public procurement employees both in the PPB and in other public institutions, in order to be able to successfully implement the necessary reforms in this area.⁷⁶ The PPB itself has undergone substantial capacity building in previous years, strengthening its human potential and available skills, especially in the IT area, to be able to lead the necessary reforms.

76* Стратегија на Бирото за јавни набавки за развој на системот на јавни набавки 2010-2012. [Public Procurement Bureau Strategy for Development of the Public Procurement System 2010-2012]. Public Procurement Bureau 2010.

Other institutions, including security sector ones, are lagging behind the capacity built in the MoF and PPB, and this affects the quality of the public procurement process. As the major financial actors among the public institutions in Macedonia, the MoF and PPB were the first to build the necessary human and administrative capacity in the field of public procurement. Security sector institutions are gradually strengthening their capacity in terms of public procurement.

DJ Values

The public procurement system in Macedonia has been heavily criticized over the last two decades as one of the reasons for the widespread corruption all across the public sector, but also in the security sector institutions. Many consecutive governments have pledged their priority to fix the public procurement system and many international actors, governments and organizations, have shown willingness to support such reforms. Although above sections suggest that some progress in terms of financial transparency in the public procurement system is evident, the public perception of these activities of the public institutions is rather low.

Over the years, the MoD and Mol have both been involved in heavy corruption scandals over the procurement of spare parts for artillery (MoD), procurement for army food during 2001 (MoD), as well as procurement of police cars and clothes (Mol), which have tarnished the image of both institutions in the eyes of the public. The classified type of public procurement in the security sector has only added to the public perception of these institutions as non-transparent and often corrupt.

The frequent disclosure of corrupt and foul practices of public procurement in the media shows that there is no track record of good practise in this area, even though some institutions fare better than others, depending on their institutional values and human and organizational capacity.

Grade 3: The necessary basic and secondary legislation is in place and harmonized with international and EU standards in the area. Implementation is slow, though improving, as is the administrative and management capacity of the institutions involved. Values are still missing and the security sector in particular suffers from bad reputation in terms of financial transparency with public procurement.

↳ Recommendations:

Budgeting:

The budgeting legislation should be updated so that the public is more involved in the budgeting process by introduction of a Citizens' Budget.

The role of the Parliament in budgetary oversight should be strengthened to compensate for the lack of public access to budgeting information in the preparation stage.

The government should also allow for civil society input in the budget planning and audit and eventual restructuring processes.

Security sector institutions (MoI, MoD, IA) should make their budgets more transparent by making them available to the public upon request or on their web-sites.

Public procurement:

The entire public sector needs to make a sustained effort – through positive examples, respecting the law and prosecuting of fraud – at domesticating values of financial transparency in budgeting and public procurement to gain the trust of the population and strengthen institutional capacity.

Public procurement officers in ministries and public bodies need to be trained to use advanced electronic tools of public procurement and the use of electronic procurement should be expanded to include more types of procurement calls.

▾ Bibliography:

Primary sources:

Устав на Република Македонија [Constitution of the Republic of Macedonia]. Official Gazette of the Republic of Macedonia. No.52. 22.11,1992.

The Constitution of the Republic of Macedonia has been amended with the following amendments: Amendments I and II (10 January 1992); Amendment III (02 July 1998); Amendment IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII and XVIII (20 November 2001); Amendment XIX (30 December 2003); Amendments XX, XXI, XXII, XXIII, XXIV, XXV, XXVI, XXVII, XXVIII, XXIX and XXX (09 December 2005)

Закон за полиција [Law on Police]. Official Gazette of the Republic of Macedonia No.114/2006, 03.11.2006

Закон за одбрана [Law on Defense] Official Gazette of the Republic of Macedonia No. 42/2001, 01.06.2001

[Law Amending the Law on Ombudsman]. Official Gazette of the Republic of Macedonia. No. 05/03,

[Law Amending the Law on Ombudsman]. Official Gazette of the Republic of Macedonia. No. 58/2006, 11 May 2006

[Law Amending the Law on Ombudsman]. Official Gazette of the Republic of Macedonia. No. 110/2009, 02 September 2009

Закон за Државна ревизија [Law on the State Audit], Official Gazette of the Republic of Macedonia.No. 66/2010, 13 May 2010

Закон за Државна ревизија [Law on the State Audit], Official Gazette of the Republic of Macedonia.No. 65/1997, 22 December 1997

Закон за класифицирани информации [Law on Classified Information], Official Gazette of the Republic of Macedonia. No. 09/04, 27 February 2004.

Закон за јавните набавки [Law on Public Procurement], Official Gazette of the Republic of Macedonia. No. 136/07. 12 November 2007.

Закон за внатрешна ревизија во јавниот сектор [Law on Internal Audit in the Public Sector], Official Gazette of the Republic of Macedonia. No. 69/04, 7 December 2004.

Закон за буџетите [Law on Budgets], Official Gazette of the Republic of Macedonia. No.64/2005, 3 August 2005.

Стратегија на бирото за јавни набавки за развој на системот за јавни набавки Public Procurement Bureau Strategy for Development of the Public Procurement System 2010-2012]. Public Procurement Bureau. 2010.

Web Sources

1. Ministry of Finance web-site. www.finance.gov.mk
2. Ministry of Interior web-site. www.moi.gov.mk
3. Ministry of Defense web-site. www.mod.gov.mk
4. Intelligence Agency web-site. www.ia.gov.mk
5. State Audit Office web-site. www.dzr.gov.mk
6. Public Procurement Bureau web-site. javni-nabavki.finance.gov.mk
7. E-budget web-site. e-budget.finance.gov.mk
8. Electronic Public Procurement System web-site. www.e-nabavki.gov.mk

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